U. S. Army Community and Family Support Center (USACFSC)

Victim Advocacy and Transitional Compensation

Department of Defense Victim Assistance Program Training Conference

7- 8 May 2003

Ms. Sharon Llewellyn, Program Manager

Ms. O'Malley Pitcher, Attorney

Order of Briefing

- Program Purpose
- Victim Advocacy
- Transitional Compensation
- Legal and Regulatory Foundation
- Applicability
- Eligibility Criteria
- Dependent Definitions
- Persons Not Eligible
- What This Means
- Criminal Law Practice Tips
- Forfeiture Provisions
- Payment Provisions
- Transitional Compensation Performance
- Issues
- Program Status
- Statistics
- Database Analysis
- Conclusions

Purpose

- **To provide specialized crisis intervention services and assistance to victims of abuse. This assistance includes the provision of monetary compensation and other tangible benefits to eligible dependent family members of active duty soldiers separated or sentenced to total forfeiture of pay and allowances for a dependent-abuse offense.**

Victim Advocacy

- Crisis intervention services and assistance -
  - Safety planning and referral to military and civilian shelters and agencies.
  - Liaison with medical facilities, financial and legal agencies, law enforcement, and the command.
  - Assistance in securing medical treatment.
  - Information on legal rights and military and civilian resources.
  - Pre-trial and post-trial support for victims.
  - Assistance in applying for Transitional Compensation and other benefits.
  - Specialized education for commanders, victims, soldiers, and families.

Transitional Compensation

- **Monetary compensation payable for minimum of 12 months or the soldier's end of obligated service, whichever is longer, up to 36 months. Monthly payment for the spouse - $948, eligible child - $237, or child only - $402.**
  - **Family member ID cards**
  - **Dental care through military facilities and medical care as TRICARE beneficiaries**
  - **Access to commissaries and exchanges - subject to host nation agreements overseas**
- **Split payments to spouses and legal guardians or the states if spouses do not have custody of eligible children.**

Legal and Regulatory Foundation

- **FY94 National Defense Authorization Act (P.L. 103-160)- provided benefits for dependents of military personnel on active duty for more than 30 days who, after 29 November 1993, are separated or sentenced to total forfeiture of pay and allowances for a dependent-abuse offense. Codified at 10 U.S.C.§ 1059.**

- **DoD Instruction 1342.24, Transitional Compensation for Abused Dependents, 23 May 95 - established policy, assigned responsibilities, and prescribed procedures.**

- **USACFSC - assumed proponency in August 1995 and published initial regulatory guidance in AR 608-1, Army Community Service (ACS), August 1997. Current guidance located in AR 608-1 dated 1 August 2000.**

Applicability

- **Authorized pursuant to 10 USC 1059 & DODI 1342.24 where service member is:**
  - **separated from active-duty pursuant to a court- martial sentence resulting from a dependent-abuse offense; or**
  - **administratively separated if the basis includes a dependent-abuse offense; or**
  - **Sentenced to forfeiture of all pay & allowances by a court-martial convicting SM of a dependent-abuse offense**

Eligibility Criteria

- **Eligibility begins on *date of initiation of administrative separation* or *date the convening authority approves the court-martial sentence*.**

- ***Dependent-abuse offense* must be specified as a basis for the administrative or court-martial separation or forfeiture of all pay and allowances in accordance with the UCMJ to establish eligibility.**

Dependent Definitions

- **Dependent child must have been residing with service member *at the time of* the dependent-abuse offense to be eligible for payments. Child must be:**
  - **Under 18 years of age**
  - **18 years or older, but incapable of self-support because of mental or physical incapacity**
  - **Between 18 and 23 years, but enrolled full-time in an institution of higher learning and dependent on service member for > ½ of support**
- **Spouse or former spouse where appropriate**

Persons Not Eligible

- **Child aged 18 and *not* in an institution of higher learning. Example: 18-year old in high school**
- **Child of a service member who has not been separated or sentenced by court-martial. Example: Service member commits suicide shortly after offense.**
- **Child not residing with the service member at the time of the dependent-abuse offense. Examples:**
  - **Child not born at time of offense.**
  - **Child visiting the service member pursuant to custody agreement, but not residing with the service member.**

What This Means…

- **Statute requires specific language to establish dependent-abuse offense as a basis for separation or forfeiture of all pay and allowances.**
  - **Court-martial – soldier must be found guilty of committing an act punishable under the UCMJ or a criminal offense within the civilian jurisdiction defined by 10 U.S.C. upon dependent**
  - **Administrative separation - soldier must be separated for an offense that includes an offense against the dependent victim in accordance with the UCMJ**
- **Consult with SJA to ensure that language used clearly specifies the dependent-abuse offense and the victim (spouse or child).**
- **Maintain interface between the VW Liaison and Advocate for provision of comprehensive services.**

Criminal Law Practice Tips

- For administrative separations, the initiation letter must cite to a regulatory provision authorizing and specifically refer to a dependent-abuse offense as a basis.
- Dependent-abuse offense does not need to be sole or primary basis for the separation action.
- Commonly cited provisions:
  - Pattern of misconduct (AR 635-200, para. 14-12b).
  - Commission of serious offense (AR 635-200, para. 14-12c).
  - Conviction by a civil court (AR 635-200, para. 14-5).
- Consider entire background (counselings, Art. 15s, reprimands) on the service member to see if there is any evidence of dependent-abuse offense.
- Difficult to go back later after separation action is being processed and add a dependent-abuse offense.
- Include date on the initiation letter (for purposes of eligibility).

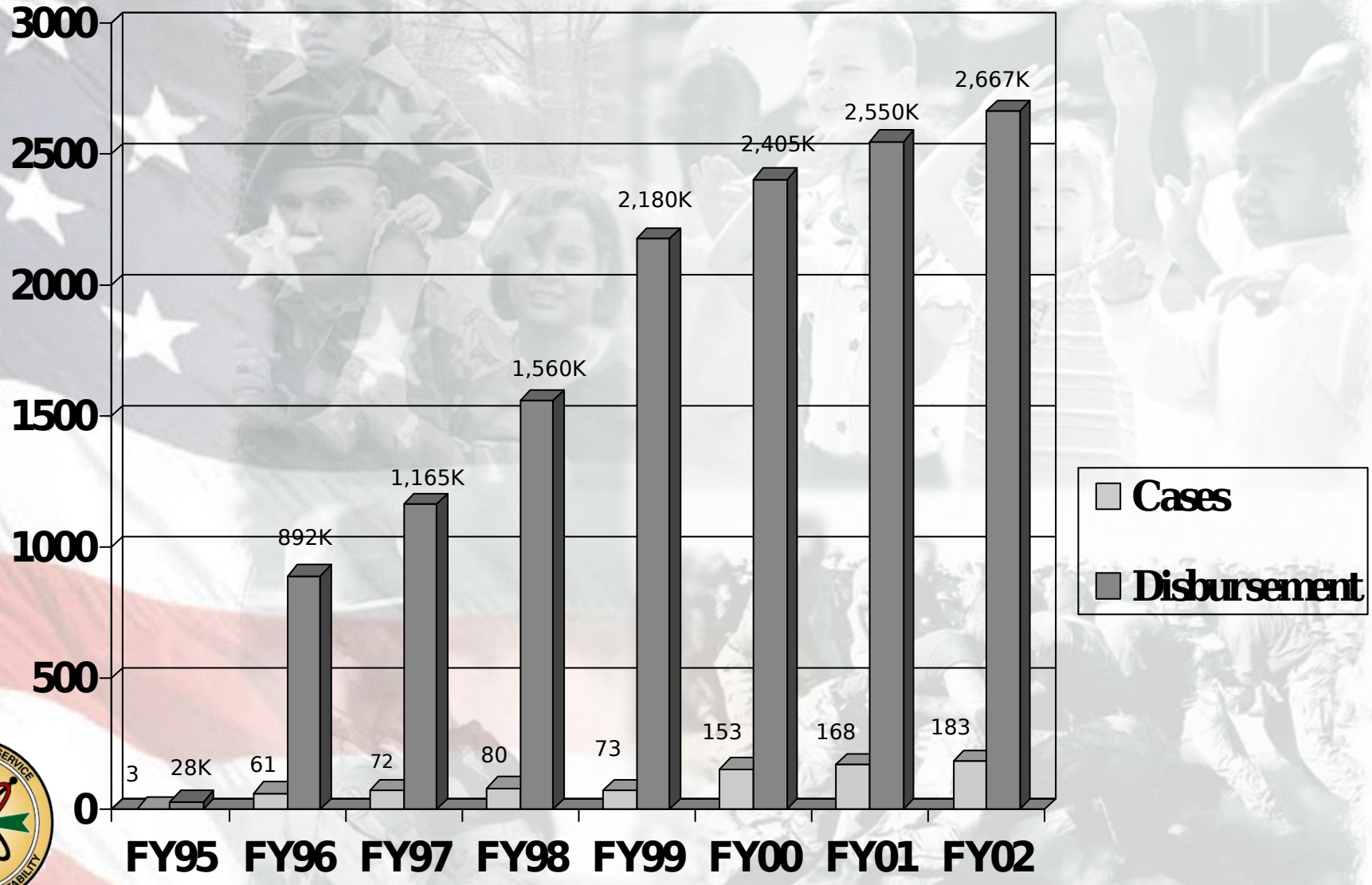
Forfeiture Provisions

- **Certification required that, if married, spouse was not an active participant in child abuse. DD Form 2698**
- **Payee certification required that recipient is not cohabiting with former member, has not remarried, has custody of dependent children claimed, was married to member at the time of the offense, and claims payment under Section 1058, Title 10, U.S.C.**
- **Compensation forfeited if spouse cohabits with former sponsor, remarries, or is not in compliance with annual re-certification through DFAS. DD Form 2698**

Payment Provisions

- Certification of eligibility through DFAS occurs only once per year. No provisions for policing by the Army or DFAS.
- For child under 18 not in the custody of the dependent spouse (or service member), payments will be made to a court-appointed guardian.
  - A separation agreement addressing child custody is insufficient if not incorporated into court order.
- 2 July 2001, the Associate Deputy General Counsel (Compensation Matters) memorandum provided guidance concerning 10 U.S.C. 1059(h) authorizes concurrent payment of TC and waived forfeitures under Art. 58b, UCMJ, if service member receives punitive discharge.

Performance



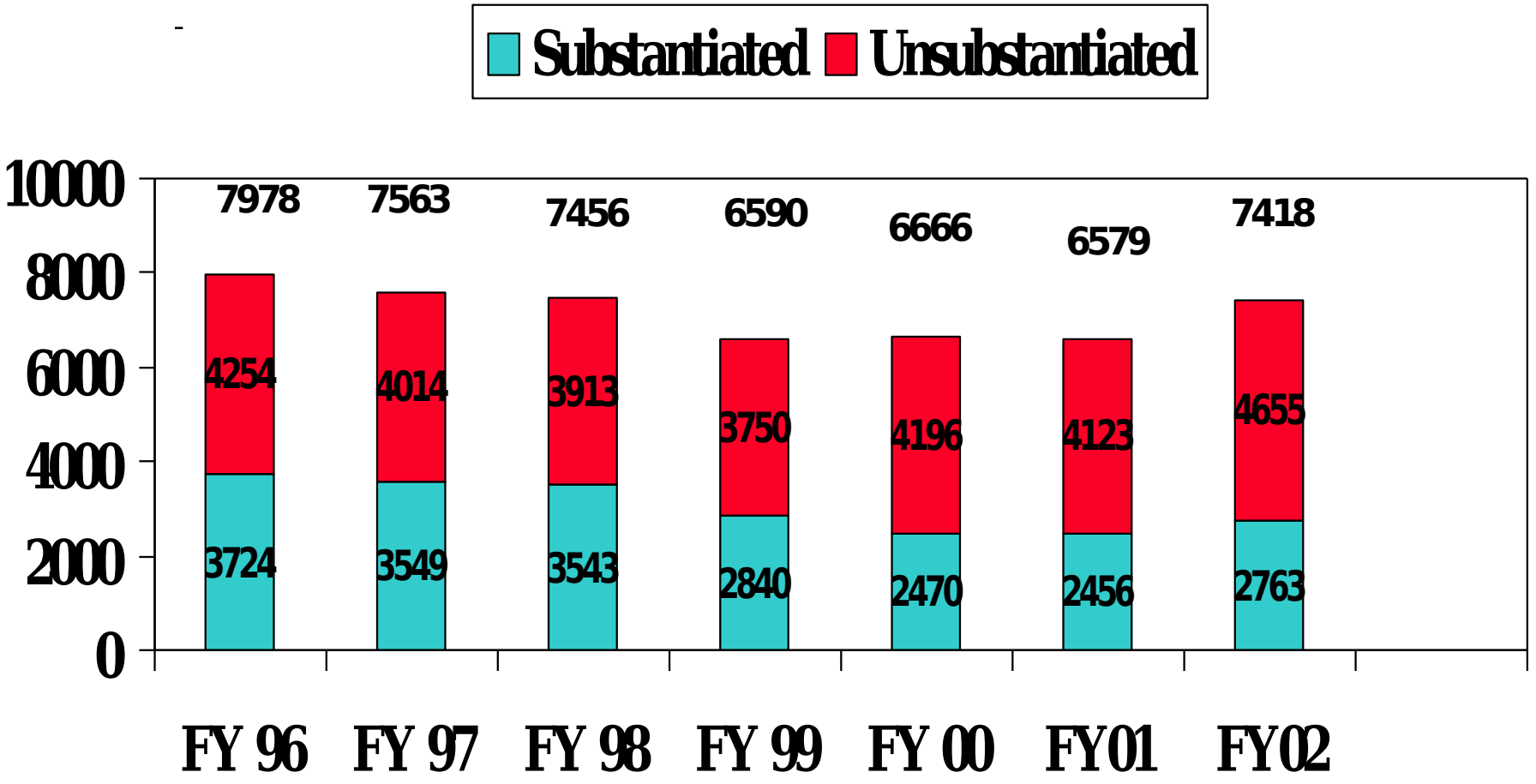
Issues

- Definition of Dependent Child
- Eligibility Dates - Court-martial v. Administrative Separation
- Forfeitures
- Waivers – 6 months, post-trial delay, upon approval, TC concurrent payments
- Policing
- Dental care (United Concordia)

Program Status

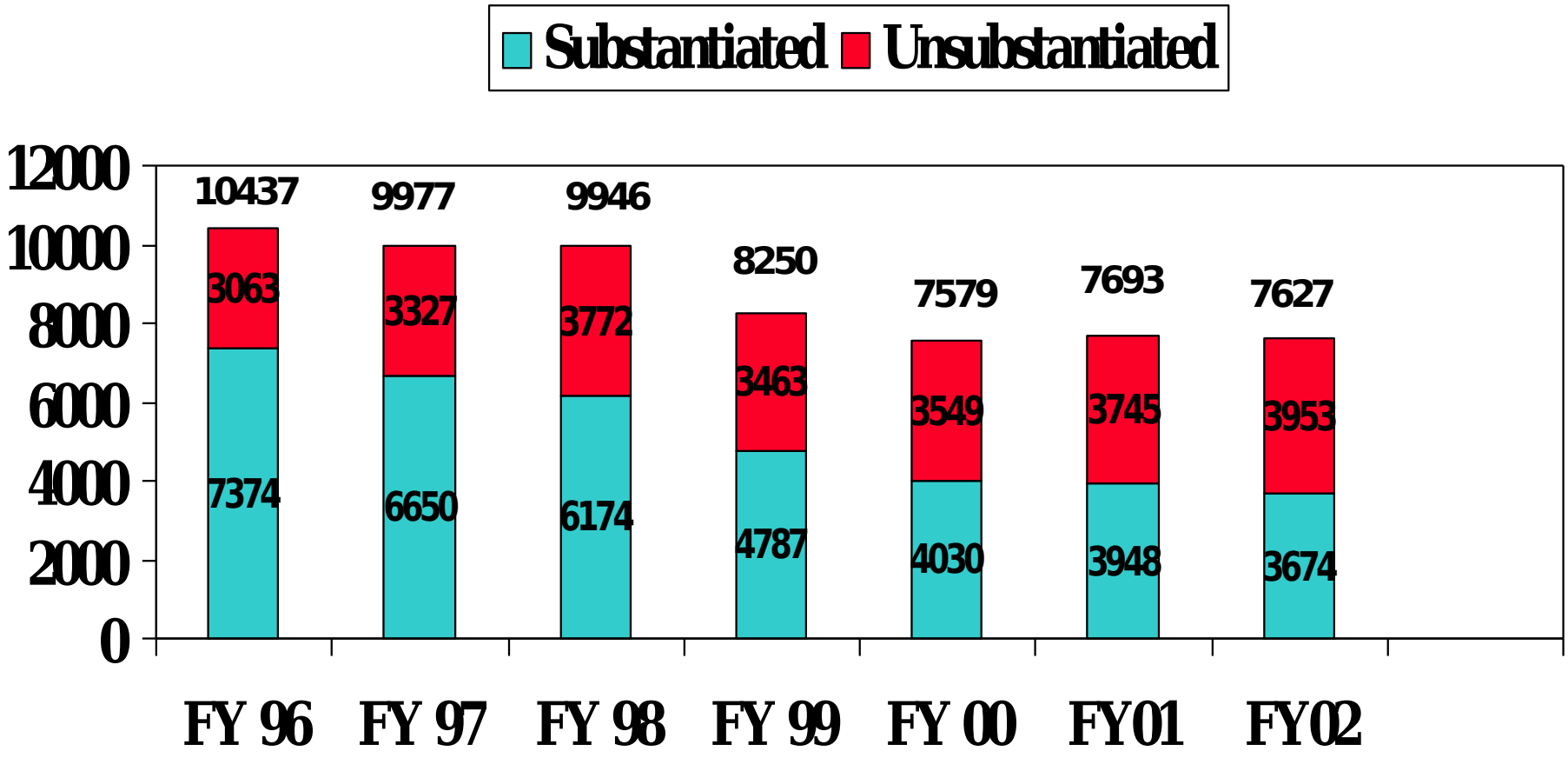
- **DODI 1342.24 currently in process of being changed to incorporate the July 2001 DoD OGC opinion authorizing concurrent payments of Transitional Compensation and pay and allowances pursuant to a waiver.**

U.S. Army
Child Abuse Cases
FY 1996-2002



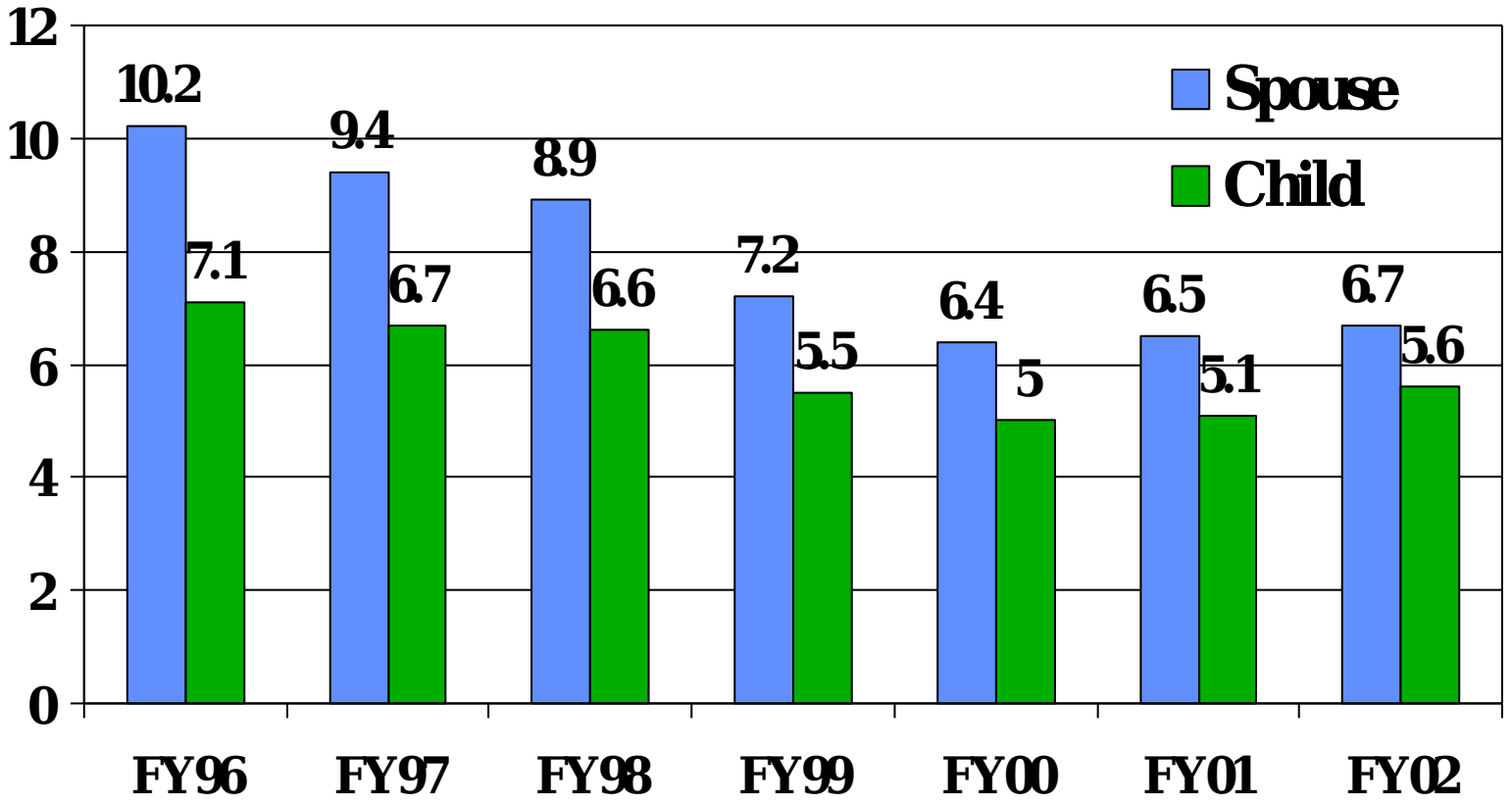
Data from Army Central Registry

U.S. Army Spouse Abuse Cases FY 1996-2002



Data from Army Central Registry

Rates/1,000-Spouse/ Child Abuse FY 1996-2002



Database Analysis

- **FY96-00 – 347 offenders, 352 applicants, and 812 children**
  - **Offenders – 345 were male, 96 % enlisted**
  - **Offenders – 191 courts-martial and 156 administrative separations**
- **Percentage of TC Offenders and Victims in ACR – 90 % of offenders, 81% of spouse victims, and 74 % of child victims reported to ACR**
- **Severity of Child Abuse and Spouse Abuse (Female) - approximately 3 x greater in TC database than in ACR (Physical)**
- **Child Sexual Abuse - most prevalent category of abuse (75%) of child abuse cases in TC database.**

Conclusions

- **Significant increase in numbers of applicants FY00-02 resulted from increased program visibility and command emphasis, not increased incidence of abuse.**
- **DIBRS provides external validation of commanders' actions (courts-martial and administrative separations based on dependent-abuse) that provide basis for benefit eligibility.**
- **Transitional Compensation Database and Processing System advancements resulted in increased efficiencies in case management and greatly reduced processing time.**

Bottom Line: The Army is people. Our goal is self-reliant Soldiers, civilians and families. Transitional Compensation is one of the commanders' best resources to help families restore self-reliance and well-being when abuse occurs that results in separation of the soldier.

Questions?

- DD Form 2698, Application for Transitional Compensation
  - Payee Certification
  - Approving Official Certification